Bail Slip

The First appellant in Crl.A.1850/03 viz., Ethiraj was directed to be released on bail as per the order of this Court dated 21.4.2004 and made in Crl.M.P.no.4076/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 28.09.2006

Coram

The Honourable Mr. Justice K. RAVIRAJA PANDIAN
and
The Honourable Mr. Justice M. CHOCKALINGAM

Crl. A. No.1850 of 2003

1. Ethiraj
2. Dharma
3. Arunachalam
4. Arul
5. Krishnan ... Appellants/Accused 1 to 5

..Vs..

State by,
Inspector of Police,
Banavaram Police Station,
Banavaram Circle. ... Respondent/Complainant
(Crime No.166/2001)

Appeal filed under section 378 Cr.P.C. praying for the relief as stated below.

For Appellant : Mr. T. Sudanthiram
For Respondent : Mr. P. Kumaresan, Addl. Public Prosecutor

JUDGMENT

(Judgment was delivered by M. CHOCKALINGAM, J.)

The appellants, five in number, challenging the judgment of the learned Additional District and Sessions Judge, Fast Track Court No.II, Ranipet, Vellore District dated 11.11.2003 in S.C. No.15 of 2002, filed this appeal. The charges and conviction against them are as follows:

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(i) The first accused stood charged, tried for the offences under Sections 147, 148, 324, 323 and 302 read with 140 of the Indian Penal Code and found guilty for an offence under section 302 of the Indian Penal Code and awarded with life imprisonment.

(ii) Accused 2 and 3 stood charged, tried for the offences under Sections 147, 148, 324, 323 and 302 read with 149 of the Indian Penal Code and each of them found guilty for the offences under Sections 147 and 323 of the Indian Penal Code and awarded with punishment of 65 days Rigorous Imprisonment and to pay a fine of Rs.250/- each in default to undergo Rigorour Imprisonment for 15 days for each offence and the sentences should run concurrently.

(iii) Fourth accused stood charged, tried for the offences under Sections 147, 148, 324, 323 and 302 read with 149 of the Indian Penal Code and found guilty for the offences under Sections 147, 323 (2 counts) of the Indian Penal Code and awarded with punishment of Rigorour Imprisonment for 53 days and to pay a fine of Rs.250/- in default to undergo Rigorour Imprisonment for 15 days for an offence under Section 147 of the Indian Penal Code and Rigorour Imprisonment for 53 days and to pay a fine of Rs.250/- on each count in default to undergo Rigorour Imprisonment for 15 days for an offence under Section 323 of the Indian Penal Code(2 counts) and the sentences should run concurrently.

(iv) Fifth accused stood charged, tried for the offences under Sections 147, 148, 324, 323 and 302 read with 149 of the Indian Penal Code and found guilty for the offences under Sections 147 and 324 of the Indian Penal Code and awarded with punishment of Rigorour Imprisonment for 53 days and to pay a fine of Rs.250/- in default to undergo Rigorour Imprisonment for 15 days for an offence under Section 147 of the Indian Penal Code and Rigorour Imprisonment for 53 days and to pay a fine of Rs.500/- in default to undergo Rigorour Imprisonment for one month for an offence under Section 324 of the Indian Penal Code and the sentences should run concurrently.

(v) Accused 6 and 7 stood charged and tried for the offences under Sections 147, 148, 324, 323 and 302 read with 149 of the Indian Penal Code and they are acquitted of the charges levelled against them.

2. The short facts necessary for the disposal of the case can be stated thus:

(i) P.W.8 is the wife and P.Ws.1, 2 and 3 are sons of the deceased Velu. The accused and P.Ws. are all residents of Palla Colony in Ayilan village. In a festive occasion, there was a fight between the third accused and P.W.3. A complaint lodged against the third accused was also withdrawn.

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(ii) On the date of occurrence viz. 4.6.2001 afternoon, sixth accused was found talking in filthy language in front of the house of P.W.1against P.W.6 Venkatesan. P.W.5 came forward to question about the same. Then, the fourth accused took a stick and attacked P.W.5 on her hip. In that course, she had pain and she was taken inside for the purpose of taking her to hospital. When she was being taken, she informed about the incident to P.Ws.1, 4 and 5. Thereafter, P.W.5 was taken outside to take her to the hospital. When P.W.1 went inside the house to take money, he found all the accused persons armed with sticks standing in front of the door.

(iii) The first accused attacked the deceased Velu on his head. He fell down. This was witnessed by P.W.1. On seeing the other witnesses, who are all injured in the occurrence, the first accused instigated others to attack them and in that course of transaction, the injured witnesses were all attacked. All these accused fled away from the place of occurrence. They also found the deceased dead.

(iv) P.W.12 Doctor examined P.W.2 and marked Ex.P9 accident register. He also examined P.Ws.3, 4,5,6 and accident register copies are marked as Exs.P10 to 13 respectively. P.W.1 went to the police station and gave complaint Ex.P1 to P.W.19 the Sub Inspector of Police. On the strength of the same, a case came to be registered on 4.6.2001 at 6 p.m. in Crime No.166 of 2001 and the First Information Report Ex.P24 was despatched to the Court.

(v) The case was taken up for investigation by P.W.20. He proceeded to the place of occurrence, conducted inquest on the body of the deceased in the presence of witnesses and Panchayatars. Ex.P25 is the inquest report. He also prepared Observation Mahazar Ex.26 and Rough sketch Ex.P27. He also recovered M.Os.1 to 7 available there under Mahazar Ex.P28. At about 2.30 p.m. he arrested accused 1 to 3. The third accused gave a complaint and on such complaint also, a case was registered in Crime No.167 of 2001. The injured accused were also medically examined by the Doctor and the accident register copies of accused 1, 2 and 3 were marked as Exs.P.6 to 8. One Haridoss, son of accused No.3 was also injured and he was also medically examined. Ex.P14 is the accident register in this regard. All the accused persons were arrested and sent for judicial remand. Case in Crime No.166 of 2001 was taken up for further investigation. All the Materials Objects were sent for chemical analysis and two reports viz. Chemical analysis report Ex.P20 and serological report Ex.P19 were also received.

(vi) P.W.21 Inspector of Police took up the case for further investigation. After obtaining opinion from the Public Prosecutor, a final report was filed before the Court against the accused and the case was committed to the Sessions Court and necessary charges were framed against the accused.

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3. In order to substantiate its case, the prosecution examined P.Ws.1 to 21 and relied on Exs.P1 to P30 and also relied on M.Os.1 to 7. On completion of examination of witnesses on the side of the prosecution, when the accused were questioned under Section 313 of the Criminal Procedure Code, they denied them as false. No defence witness was examined.

4. The Trial Court, after hearing the arguments advanced by either side and scrutinized the materials available on record, found the accused 1 to 5 guilty referred above. Hence this appeal is filed at the instance of the appellants.

5. Advancing arguments on behalf of the appellants, learned counsel made his sincere attempt in assailing the judgment of the Trial Court and made the following submissions:-

(i) In the instant case, according to the prosecution, the occurrence had taken place on 4.6.2001 at about 3 p.m. in front of the house of the deceased. When P.W.5, who was attacked by the fourth accused previously, was taken to the hospital by other witnesses, the deceased was attacked by the first accused and all the accused persons chased the prosecution witnesses and attacked them. The case placed before the Lower Court suffered in many ways.

(ii) Firstly, even as per the F.I.R. Ex.P1, the occurrence has commenced much earlier. When one of the accused was using filthy language in front of the house of the deceased against P.W.6 and the same was questioned by P.W.5, the fourth accused took the stick and attacked and hence she sustained injury. Thereafter, when she was taken to the hospital, all these accused persons armed with sticks, in which the first accused attacked the deceased and the other accused attacked the other witnesses. Now at this juncture, even as could be seen from the F.I.R. Ex.P1 the whole transaction commenced, when one of the accused was using the filthy language against the sixth accused in front of the house of the deceased and the attack was over by the accused. In the instant case, accused Nos.1`, 2, 3 and one Haridass, son of the third accused were all injured in that regard. Exs.P6 to 8 and 14 are the accident registers as to the injuries sustained by them were marked. The perusal of these documents would go to show that the occurrence had taken place at about 1.40 p.m. According to the prosecution case, the attack was made on the deceased at about 3 p.m. A reading of the F.I.R. would clearly reveal that these accused were injured during the course of transaction. If to be so, the duty was cast upon the prosecution to explain the injuries sustained by the accused. Even the F.I.R. which is on the strength of Ex.P1 would reveal that these accused sustained injuries in the course of transaction, but none of the witnesses namely eye witness to the occurrence have spoken about anything about the injuries sustained by the accused. In a counter case registered against the prosecution witnesses

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in Crime No.167 of 2001 for offences under Sections 147, 148, 324, 323, 307 of the Indian Penal Code, and the same has also mentioned in the history to the post-mortem Doctor that one Haridoss, son of the third accused sustained grievous injury and his life is under threat, the duty of the prosecution is to explain the injuries sustained by them also. But the prosecution failed to explain the injuries sustained by anyone of the accused.

(iii) Secondly, in the instant case, the entire transaction commenced at 1.40 p.m. and completed at 3 O' clock. Admittedly, the police personnel have registered two cases one is Crime No.166 of 2001, at the instance of P.W.1 and another is Crime No.167 of 2001, at the instance of the third accused. At this juncture, it is pertinent to point out that Crime No.167 of 2001 registered by the respondent-police at the instance of the third accused was also for a grave crime of attempt to murder. A perusal of Ex.P15, the history of the case to the Doctor would clearly reveal that case in Crime No.167 of 2001 was a counter case. If to be so, the duty cast upon the prosecution is to place all materials. It is pertinent to point that with regard to Crime No.167 of 2001 the prosecution has not even filed a F.I.R. copy or the statements recorded. Even P.W.19, the Sub Inspector of Police, who registered the case, P.W.20, the Inspector of Police, who investigated the case and P.W.21 who filed the final report have not even whispered anything about the case in Crime No.167 of 2001, but in the cross examination, P.W.20 had well admitted that he investigated the case in Crime No.167 of 2001. P.W.20 on suggestion, he stated that the case was referred as "Mistake of Fact". Hence, the prosecution thoroughly failed to investigate in respect of the counter case in Crime No.167 of 2001. Hence the Trial was not able to find out the truth of the entire case and take a correct decision of the case and thus it would be fatal to the prosecution case.

(iv) Thirdly, according to the prosecution, the occurrence had taken place on 4.6.2001 at 3 p.m. The report was given on 4.6.2001 at 6 p.m. and the case was actually registered by P.W.19 at 6 p.m., but the First Information Report reached the Court i.e. Judicial Magistrate, Sholingur on 5.6.2001 at about 3.30 p.m. The Head Clerk of the Judicial Magistrate Court, Sholingur, who was examined as P.W.14, has categorically spoken to the fact that the First Information Report was received by the Court only at 3.30 p.m. on 5.6.2001 and thus, there was a delay of nearly 21 hours in a case originally registered in Crime No.166 of 2001 for murder. If to be so, the delay of 21 hours remained unexplained. The prosecution made some attempt to give explanation that P.W.17, the police Constable who took the First Information Report could not despatch the same to the Court, since the concered Judicial Magistrate was not available at that time. At no stretch of imagination, this explanation can be accepted for the delay of 21 hours in a case of murder.

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(v) Fourthly, In the instant case, first part of occurrence, the deceased was attacked by the first accused was spoken to only by the first accused and other witnesses did not speak. P.W.1 did not know about the second part the injured witnesses. The F.I.R. would narrate entire part that P.W.1 examined he did not speak about the second part of occurrence. In the instant case, the prosecution has suffered all these lacuna, infirmities which and the circumstances the Lower Court should have given benefit of doubt to the appellants and has not proved beyond reasonable doubt.

6. This Court heard the learned Additional Public Prosecutor on the above contentions. This Court paid its anxious considerations on the submissions made by either side.

7. In the instant case, it is not a fact in controversy that one Velu the father of P.W.1 was done to death in the incident taken place on 4.6.2001 at 3 p.m. in front of his house and following the inquest made by the Investigators, the body was subjected to autopsy and the post-mortem Doctor has given an opinion that the deceased died due to shock and hemorrhage and due to the injuries sustained by him on the vital organs. This fact was never questioned by the accused and the same has to be recorded so.

8. In the instant case, in order to establish the accusation made against the accused 1 to 7 before the Trial Court, the prosecution rested its case on the direct evidence. P.Ws.1 to 6, who were examined by the prosecution, were not only eye witnesses, but also injured witnesses. It is also true that the prosecution has placed necessary medical evidence in respect of the injuries sustained by P.Ws.2 to 6. Now, at this juncture, it would be pointed out that in the instant case, though the prosecution placed ocular testimony which was fully corroborated by medical evidence, this Court is afraid, whether the prosecution placed before the Court entire material to take a correct decision in this case.

9. As could be seen from the available material, the case of the prosecution in gist is that one of the accused uttered filthy language against P.W.6 and the same was questioned by P.W.5 and at that juncture, the fourth accused came with a stick and attacked P.W.5 on her hip and she sustained injury. When she was about to be taken to the Hospital, P.W.1 entered the house to take money and found all these accused persons 1 to 7 armed with sticks and the first accused attacked the deceased on his and at the instigation of the first accused, all the accused attacked the injured witnesses.

10. At this juncture, it is pertinent to point out that a reading of the complaint Ex.P1, which is the earliest document, it is clear that accused 1 to 3 and one Haridoss, son of the third accused also injured in the occurrence. The prosecution also placed Exs.P.6 to 8 and

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14, which are accident register copies with regard to the injuries sustained by accused 1 to 3 and one Haridoss, son of third accused. All these documents are perused. It is true that the injuries found therein are simple. But, insofar as Ex.P14 the accident register of Haridoss is concerned, there was an injury found on skull. At this juncture, it is pertinent to point out that when the accused were also injured in the same transaction, none of the witnesses has spoken anything about the injuries sustained by the accused. The prosecution has also not brought forth any material, oral or documentary. Hence, it is quite clear that in the entire transaction as narrated above, the intervening circumstance is that the accused were also sustained injuries, but this fact was not spoken to by anyone of the witnesses. Merely filing of the accident register copies of accused 1 to 3 and Haridoss, son of third accused would not be sufficient. Hence, the Court is of the considered opinion that the duty is cast upon the prosecution to explain as to the injuries sustained by the accused 1 to 3 and one Haridoss.

11. Apart from this, it is rightly pointed out by the learned counsel for the appellants, when the police thought it fit to register the case in Crime No.167 of 2001 for offences under Sections 147, 148, 324, 323, 307 of the Indian Penal Code in respect of the injury sustained by the accused, the duty was cast upon the prosecution to explain the injuries sustained by the accused, but the prosecution has failed to place necessary material to explain the same.

12. The added circumstance is the suppression in respect of part of transaction. As could be seen from the available material, the entire case commenced when one of the accused uttered filthy language and ends the assault of P.W.s by the accused. If to be so, the intervening circumstances is the attack on the accused 1 to 3 and also one Haridoss by the prosecution witnesses. It is pertinent to point out that the same Sub Inspector of Police registered the case in respect of the injuries sustained by the accused in Crime No.167 of 2001, which includes offence under section 307 of the Indian Penal Code. Now the question would arise whether the transaction in which the accused persons were injured and the prosecution persons were injured are different or one and the same. It is quite evident from the material available that only one transaction took place. Ex.P15 is the history of the case which was given by the police Officer, who investigated the case, to the post-mortem Doctor, wherein he has categorically mentioned that some of the accused were also injured and a case in Crime No.167 of 2001 under Sections 147, 148, 324, 323, and 307 I.P.C. was registered and it was also mentioned as a counter case. If to be so, a duty was cast upon the prosecution that entire materials in respect of case in Crime No.167 of 2001 must be placed before the Court.

13. It is a matter of surprise to note that the prosecution had not even placed the express First Information Report before the Court with regard to counter case in Crime No.167 of 2001. Apart from that, not even

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a single document was placed before the Court, when the accused were also injured in the same transaction and the said transaction was not a distinguished and different one, but it was part and parcel of the same transaction. Hence, it is quite clear that Crime No.166 of 2001, at the instance of P.W.1 and Crime No.167 of 2001, at the instance of third accused constitute part and parcel of the same transaction. If to be so, the prosecution, in order to be fair, must place all the materials before the Court, enabling the Court to take correct decision by marshalling the evidence, but the prosecution has not even placed any material in respect of the injuries sustained by the accused, which, in the opinion of the Court, will go the root of the case. It is well preposition of law, in a case, where there is a case in counter, the prosecution is fair enough to place all the materials before the Court to take a correct decision. The prosecution has miserably failed to do so.

14. Another circumstance is, the inordinate and huge delay in the First Information Report reaching the Court. The occurrence had taken place on 4.6.2001 at 3 p.m. and the case was registered at 6 p.m. on the same day, but the First Information Report reachjed the Court at about 3.30 p.m. on the next day. Though the prosecution made some attempt to give explanation that P.W.17, the police Constable who took the First Information Report could not despatch the same to the Court, since the concerned Judicial Magistrate was not available at that time, the said explanation cannot be accepted for the delay of 21 hours in a case of murder. Hence the benefit of doubt should be given to the accused, which they are entitled to.

15. For the reasons stated above, the judgment passed by the Trial Court is set aside. The appeal is allowed and the appellants are acquitted of the charges levelled against them. It is reported that the appellants are on bail. Their bail bonds shall stand cancelled. The fine amount, if paid, shall be refunded.

Sd/
Asst.Registrar

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Sub Asst.Registrar

ssa.

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To

1. The Judicial Magistrate,
   Sholingur.

2. The Judicial Magistrate,
   Sholingur through
   the Chief Judicial Magistrate,
   Vellore.

3. The Addl. District & Sessions Judge,
   (Fast Track Court - II),
   Ranipet, Vellore.

4. The Addl. District and Sessions Judge,
   (Fast Track Court - II), Ranipet, Vellore
   through the Principal Sessions Judge,
   Vellore.

5. The Superintendent,
   Central Prison,
   Vellore.

6. The District Collector,
   Vellore.

7. The Director General of Police,
   Madras - 4.

8. The Inspector of Police,
   Banavaram Police Station,
   Banavaram Circle, Vellore.

9. The Public Prosecutor,
   High Court, Madras.

1 cc To Mr.T.Sudanthiram, Advocate, SR.46229.

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TEJ(CO)
RVL 18.10.2006

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